IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Writ Petition No.7200 of 2007

Shri Dnyaneshwar Ganpat Gardswar — Petitioner

Vs.

Dombivli Shikshan Prasarak Mandal
and ors. — Respondents

Mr.S.D.Thokade for petitioner.

Mr.D.S.Mhaispurkar for resp.nos.1 and 2.

Ms.P.S. Cardezo, AGP for resp.nos.3 and 4.

CORAM: B.H.MARLAPALLE, J.

December 12, 2007.

P.C.

1. Heard Mr.Thokade, the learned counsel for the petitioner.

2. Rule.

3. Mr.Mhaispurkar waives service for the respondent nos.1 and 2 and Ms.Cardezo for the respondent nos.3 and 4. Rule is taken up for final hearing forthwith.

4. The petitioner holds the Degree of M.Sc. (First Class) as well as B.Ed. (First Class) and he claims to belong to the Special Backward Class. The respondent nos.1 and 2 had released an advertisement for appointment of Shikshan Sevak in Biology and on full time basis, on 18/10/2003 and in response to the said advertisement initially the petitioner came to be appointed as Shikshan Sevak on 15/1/2004 till the end of academic year 2003-04. The management again released an advertisement for full time Shikshan Sevak and in the selection process the petitioner was appointed as Shikshan Sevak on full time basis with effect from 21/6/2004 and upto 30/4/2007. However, from 1st May 2007 or from the academic year 2007-08 he was not absorbed as Assistant Teacher nor was he reappointed as Shikshan Sevak though the management had released a fresh advertisement for the same. He, therefore, approached the School Tribunal by filing Appeal No.39 of 2007 and the said appeal has been dismissed by the School Tribunal as not maintainable as per its order dated 2/8/2007 and hence this petition.

5. Respondent nos.1 and 2 do not dispute that the petitioner was appointed as a Shikshan Sevak on full

time basis from 21/6/2004 and he continued as such upto 30/4/2007 and thus completed service of three academic years. The said respondents contend that though the petitioner was appointed on full time basis, the Education Officer (Secondary), Zilla Parishad, Thane or the Deputy Director of Education had granted approval to the appointment of the petitioner only on part time basis. The School Tribunal has held that a Shikshan Sevak is not an employee as defined under the MEPS Act, 1977 and, therefore, he could not file an appeal under Section 9 of the said Act.

6. It appears that none of the parties brought to the notice of the School Tribunal the amendment to Section 2 of the said Act adding Clause 24-A as well as sub-section (2A) of Section 5 and Section 12(1) of the MEPS Act, which read as under:

> "Section 2(24-A) - "Shikshan sevak" means a member of base teaching cadre appointed on honorarium and subject to such terms and conditions as specified in the Government Resolution published in the Maharashtra Government Gazette, Extraordinary No.12, Part

I Central sub-section, dated the 15th February, 2007, for eventual appointment as a teacher.

Section 5(2-A) - Subject to the provisions of sub-sections (3) and (4), shikshan sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

Section 12(1) - Notwithstanding anything contained in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, all shikshan sevaks appointed in accordance with the provisions of the Government Resolution published in the Maharashtra Government Gazette, Extraordinary No.12, Part I Central sub-section, dated the 15thFebruary 2007, shall be deemed to have been appointed as base cadre shikshan sevak under the said Act, for appointment as teachers on completion of three years service as such shikshan sevak rendered here to before or heretoafter, as the case may be."

7. The amendment was incorporated in the Maharashtra Act of 2007 by publication in the Government Gazette on 30th April 2007 and, therefore, it was necessary for the parties to bring to the attention of the School Tribunal the same when the issue of maintainability of the appeal was being adjudicated upon. It is now clear that if a shikshan sevak has completed three academic years continuously, he is deemed to be a permanent teacher and, therefore, he would be entitled to maintain an appeal under Section 9 of the MEPS Act. Whether the present petitioner was factually on part time or full time basis or the approval granted by the respondent nos.3 and 4 was justified, if regards be had to the workload available, are the issues which will have to be gone into by the School Tribunal while deciding the appeal on merits and in any case the appeal filed by the petitioner could not be dismissed as not maintainable.

8. Hence this petition succeeds and the same is hereby allowed. The impugned order is quashed and set aside and Appeal No.39 of 2007 is restored to the file of the School Tribunal at New Mumbai for being decided on merits. The parties are at liberty to

amend their respective pleadings, if so found necessary.

9. Rule is made absolute accordingly with no order as to costs.

(B.H.MARL